IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE SIXTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE J.CHELAMESWAR
And
THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT APPEAL NO : 1369 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 03/08/2004 in WP NO : 31949 OF 1998 on the file of the High Court.)

Between:
Tirumala Tirupati Devasthanams, rep by Executive Officer, Tirupati, Chittoor District

.....
APPELLANT

AND

1 Sri V.S.B. Koteswara Rao S/o V. Kalika Rao, Occup: Engineer, R/o 141, Sreenivasapuram, Tiruchanoor Road, Tirupathi, Chittoor District
2 The Engineer-in-Chief (Administration), I&CAD Department, Erramznzil, Hyderabad
3 The Principal Secretary, Revenue (Endowments-III) Department, Secretariat, Hyderabad

.....RESPONDENTS

Counsel for the Appellant: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondent No.1: MR. NOOTY RAMMOHAN RAO

Counsel for the Respondent Nos. 2 &3: GP FOR REVENUE

The Court made the following:

:ORAL JUDGMENT:

(Per: The Hon'ble Mr. Justice Goda Raghuram)

The Tirumala Tirupathi Devasthanam, Tirupathi (for short 'the TTD') aggrieved by the judgment of a learned Single Judge of this Court dated 03-08-2004 in W.P.No. 31949 of 1998, has preferred this appeal.

The 1st respondent having been initially appointed as Junior Engineer (Assistant Executive Engineer) in the Irrigation and Command Area Development Department of the Government of Andhra Pradesh in the year 1978 and regularized as such in the parent department, was taken on loan by the TTD on 12-11-1979. He continued to serve the TTD on the said basis. On 06-04-1998 the 1st respondent represented for absorption into the TTD

service. The TTD Management, by resolution dated 13-06-1984, acceded to the 1st respondent's request and also directed that his seniority in the cadre be reckoned with effect from 13-06-1984. The management of the TTD referred the resolution, regarding the absorption of 1st respondent into the TTD service, to the State Government. The State Government, by the order in G.O.Ms.No.809 Revenue (Endowment-III) Department dated 15-07-1985, approved the resolution of the TTD management. Thereafter, by a proceeding dated 20-08-1985 of the TTD, the 1st respondent was absorbed into TTD service and took the last rank in the cadre of Assistant Executive Engineer (Junior Engineer). Thereafter, he was promoted to the higher category of Deputy Executive Engineer on 03-09-1992 and also to the category of Executive Engineer on 23-10-2002.

Meanwhile, the Board of the TTD appears to have passed a resolution on 07/8-12-1994 to repatriate all the deputationists, who were absorbed into the TTD service to the respective parent departments. In purported implementation of such a resolution, by an order dated 13-11-1998 of the Executive Officer, TTD, the 1st respondent was ordered to be repatriated to his parent department, the Chief Engineer, TTD was directed to relieve the 1st respondent immediately and the 1st respondent was intimated that he has to approach the Superintending

Engineer, Velugonda Project Circle, Ongole for further posting. Neither the resolution of the Board of TTD dated 07/8-12-1994 nor the proceedings dated 13-11-1998 of the Executive Officer, TTD directing the 1st respondent's repatriation to the parent department were however issued after notice and opportunity to the 1st respondent.

Aggrieved by the order dated 13-11-1998, the 1st respondent filed the writ petition. The 1st respondent's grievance having commended acceptance of the learned single Judge, the writ petition was allowed.

The basis for the order dated 13-11-1998 impugned in the writ petition appears to be a resolution of the Board dated 07/8-12-1994, a copy of which has been placed on record in this appeal also. A perusal of the Board Resolution clearly discloses that the entire issue that fell for consideration of the TTD Board was as regards the absorption into service of one Mr. R. Suryanarayana Murthy, Assistant Director of Information and Public Relations Department of the State Government, who was deputed to the TTD services. Mr. R. Suryanarayana Murthy's absorption into TTD was challenged by another employee of the TTD. A Division Bench of this court, taking a view that there was no provision for absorption of a deputationist, allowed that writ petition and declared the absorption of the said R. Suryanarayana Murthy to be illegal. Mr. R. Suryanarayana Murthy, however,

continued in the service of the TTD on account of the interim orders granted and during the pendency of a special leave petition filed by the TTD against the judgment of the Division Bench of this Court. Mr. R. Suryanarayana Murthy retired from service on 31-12-1993, while in the active service of the TTD. The TTD's Civil Appeal No. 184 of 1988 was dismissed on 17-08-1994. Considering this fact situation, the TTD Board came to conclusion that a permanent absorption of deputationists into the TTD service was impermissible. All this exercise by the TTD was in the context of considering how to treat the case of Mr. R. Suryanarayana Murthy for the purposes of terminable benefits, paid or payable to Mr. Suryanarayana Murthy. Having recorded the facts and conclusions insofar as Mr. R. Suryanarayana Murthy, in the penultimate paragraph of the Board resolution dated 7/8-12-1994 however, the Board resolved to repatriate all the 'absorbtionists' to the parent department. However, despite the above resolution in December, 1994, no decision was taken with regard to the 1st respondent herein for nearly four years till the order dated 13-11-1998 of the Executive Officer of TTD repatriating the 1st respondent to the parent department, was issued.

It requires to be noticed that the validity of absorption into the TTD service of another employee deputed from the service of A.P.S.R.T.C. fell for consideration by a Division Bench of this Court in W.A.No. 1993 of 1998. The

appeal was allowed by the judgment dated 29-10-2001 preferred by an aggrieved deputationist of the TTD service, whose claim for absorption having been rejected by the TTD, had filed a writ petition – W.P.No. 21445 of 1995 – which was dismissed by a learned single Judge of this court. The Division Bench of this court in the judgment dated 29-10-2001 in W.A.No. 1993 of 1998, after having considered other precedents, including the judgment of the earlier Division Bench of this court and the Supreme Court in R. Suryanarayana Murthy (supra) held that the decision in R. Suryanarayana Murthy's case is clearly distinguishable. This court held as under:

> *"The decision of the Division Bench in R. SURYANARAYANA MURTHY is clearly distinguishable. In C.M. NAIDU (3 supra), as noticed herein before, no provision existed for permanent absorption. In the instant case, Annexure-II of the Rules clearly postulates appointment on lean of service. Rule 9, as noticed herein before, refers to appointment. When appointment can be made on loan of service, the same, in our considered view, would lead to an inference that such an appointment can be made also by absorbing the deputationist on permanent basis. If such a construction is not made, one of the modes of appointment in terms of Annexure-II of the Rules becomes otiose. Such a construction cannot thus be countenanced.*
>
> *The 1989 Rules had not been and could not have been examined by the Division Bench in R. SURYANARAYANA MURTHY (1 supra).*
>
> *The learned single Judge in our opinion, therefore, committed a manifest error in not considering the aforementioned statutory provision. The entry of the appellant in the service of the TTD was not a back door one. He was appointed in terms of the*

resolution adopted by the Board, which as noticed herein before, having regard to the provisions contained in Section 97 of the Act, had a general power of superintendence. Even admittedly, the Board's resolution received an acceptance by the State in terms of G.O.Rt.No. 1821, Revenue (Ends-III) Department dated 01-12-1993. Once the appellant was absorbed legally in the services of TTD, the question of his repatriation to his parent department did not and could not arise.

When once the Corporation granted a No Objection certificate the relationship of master and servant by and between the corporation and the appellant seized to exist.

A new relationship of employee between the TTD and the appellant came into being. In such a situation, the appellant can continue to be the employee of the TTD only.

In UMAPATI CHOUDARY (2 supra) the apex court was considering the similar matter. The appellant therein was holding the post of Controller of Examinations, Bihar Sanskrit Shiksha Board. He was brought on deputation from Kameshwar Singh Darbhanga Sanskrit University and his services had been regularized wherefor, permission of the State was also obtained. In the afore mentioned situation, it was held:

Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organization (commonly referred to as the parent department or lending authority) to another department or cadre or organization (commonly referred to as the borrowing authority). The necessity for sending on deputation anses in public interest to meet the exigencies of public service. The concept of deputation is consensual and involved and a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the

borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand all the three conditions were fulfilled.

We have, having regard to the aforementioned decision of the Apex Court, no other alternative but to hold that the learned single Judge erred in dismissing the writ petition. The same is, therefore, set aside. The writ appeal is accordingly allowed. The appellant herein is declared to be an employee of the TTD."

It is stated by Mr. A.K. Jayaprakash Rao, learned standing counsel for the appellant-TTD that the judgment of this court in W.A.No. 1993 of 1998 dated 29-10-2001 has become final and no appeal was preferred therefrom.

In view of the law declared in W.A.No. 1993 of 1998 in the judgment dated 29-10-2001, that when an appointment could be made on loan of service, it would lead to an inference that such an appointment could also be made on absorption of a deputationist on permanent basis, this court is of the considered view that the order dated 13-11-1998 repatriating the 1st respondent on the ground that no provision for 'absorption' of deputationists exists in the relevant rules governing the employment in the TTD, is unsustainable. Further, having been absorbed into the TTD service for nearly twenty years now, after approval of such an absorption by the State Government and consequently having lost his lien in the Irrigation Department of the State Government, the 1st respondent has very clearly a vested right and a clear legitimate expectation of continuance in the service of the TTD till its

determination in the natural course. Such a vested right and legitimate expectation could not have been deprived by the TTD without following the principles of natural justice. No opportunity was provided to the 1st respondent either before the policy resolution of the TTD dated 7/8-12-1994 or the order of the Executive Officer, TTD dated 13-11-1998 by which order he was repatriated to the Irrigation Department.

For the plurality of reasons above, we are of the considered view that the order of the learned single Judge suffers from no error in the application of law or analysis of the relevant facts and legal principles, warranting interference in this appeal, which is without merits and is accordingly dismissed. No costs.

_____

J. CHELAMESWAR, J

_____

GODA RAGHURAM, J

Dt. 16-09-2004
Pvks/*

To

1. The Engineer-in-Chief (Administration), I&CAD Department, Erramanzil, Hyderabad
2. The Principal Secretary, Revenue (Endowments-III) Department, Secretariat, Hyderabad
3. 2 CCs to the Government Pleader for Revenue, A.P. High Court Buildings, Hyderabad (OPUC).
4. 2 CD copies
5. The Executive Officer, TTD, Tirupati, Chittor District.